

**Appl. No. 10/049,976**  
**Amdt. dated March 11, 2004**  
**Reply to Office Action of December 19, 2003**

### **REMARKS/ARGUMENT**

This amendment responds to the Office Action of December 19, 2003.

Claims 10-14 are pending in the application with claims 1-9 having been canceled, and new claims 10-14 added.

Please note: The Office Action stated that claims 1-8 were pending in the application. However, claim 9 had been added by the Preliminary Amendment filed on or about February 19, 2002.

The Examiner has stated: "Claim 1 speaks to fungicides, yet claim 5 speaks to pesticidal. Applicants need to pick one, per Rule 475."

New claims 10-14 contain no reference to "pesticides".

The Examiner has also stated: "The expression 'at least one' in claims 5 and 6 is 'open'. 'One or more' is suggested'."

In the newly presented claims, the expression "at least one" is used only in claims 10 and 13 in connection with the number of moieties that can be present as substituents on a 2-pyridyl ring. Since this ring can have no more than four such moieties, it is submitted that, as used here, "at least one" is not open-ended, but can only be one, two, three, or four. Accordingly, it is respectfully requested that this objection be withdrawn.

Claim 1 has been rejected under 35 U.S.C. 112, first and second paragraphs, primarily owing to use of the term "heterocyclic" and the remaining claims have been rejected as being dependent on a rejected claim.

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As noted above, claims 1-9 have been canceled and new claims 10-14 have been submitted in their place. New claims 10-14 are directed to compounds exemplified in the subject patent application as originally filed. The "open terms and definitions", such as "carbocyclyl, heterocyclyl, "optionally substituted", etc. have now been deleted or precisely defined and the definition of the invention claimed in the present application should be clear to those skilled in the art.

Accordingly, it is requested that the rejection of claim 1 under 35 U.S.C. 112, first and second paragraphs, be withdrawn.

In view of the foregoing, it is submitted that this application is in condition for allowance and an early Office Action to that end is earnestly solicited.

Respectfully submitted,



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Paul Grandinetti  
Registration No. 30,754  
OSTROLENK, FABER, GERB & SOFFEN, LLP  
1180 Avenue of the Americas  
New York, New York 10036-8403  
Telephone (212) 382-0700